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17 *Changpeng Zhao, Yi He, and Ted Lin*

18  
19 **IN THE UNITED STATES DISTRICT COURT**  
20  
21 **FOR THE DISTRICT OF ARIZONA**

22 Ryan Cox, individually and on behalf of all  
23 others similarly situated,

24 Plaintiff,

25 v.

26 CoinMarketCap OpCo, LLC; Binance  
27 Capital Management Co., Ltd. d/b/a Binance  
28 and Binance.com; BAM Trading Services  
Inc. d/b/a Binance.US; Changpeng Zhao;  
Catherine Coley; Yi He; Ted Lin; and Does  
I-X;

29 Defendants.

30 Case No. 21-cv-08197-PCT-SMB

31 **DEFENDANTS BINANCE**  
32 **CAPITAL MANAGEMENT CO.,**  
33 **LTD., CHANGPENG ZHAO, YI**  
34 **HE, AND TED LIN'S MOTION**  
35 **TO DISMISS THE COMPLAINT**

36 **(Oral Argument Requested)**

1        Pursuant to Fed. R. Civ. P. 12(b)(2), 12(b)(5), and 12(b)(6), Defendants Binance  
 2 Capital Management Co. Ltd. (“BCM”) and Changpeng Zhao, Yi He, and Ted Lin  
 3 (collectively, the “Binance Individual Defendants”) hereby move to dismiss Plaintiff’s  
 4 Complaint for lack of personal jurisdiction, failure to state a claim, and insufficient  
 5 service of process on the Binance Individual Defendants.

6        This Motion is supported by the accompanying Memorandum of Points and  
 7 Authorities, the entire record in this action, and the good faith certification of counsel for  
 8 BCM and the Binance Individual Defendants filed concurrently herewith.

9        **MEMORANDUM OF POINTS AND AUTHORITIES**

10        **INTRODUCTION**

11        This litigation is about cryptocurrency rankings on a website operated by  
 12 CoinMarketCap OpCo, LLC (“CoinMarketCap”). Plaintiff takes issue with how  
 13 CoinMarketCap has valued a particular cryptocurrency called HEX based on rankings  
 14 criteria that are publicly disclosed. None of this has anything to do with BCM or the  
 15 Binance Individual Defendants other than the fact that BCM acquired CoinMarketCap in  
 16 2020. The claims against BCM and the Binance Individual Defendants should be  
 17 dismissed for several reasons.

18        *First*, Plaintiff has not—and cannot—meet his burden of establishing that this  
 19 Court has personal jurisdiction over BCM, a foreign investment company with no alleged  
 20 officers, employees, or operations in the United States, much less Arizona. BCM is not  
 21 “at home” in Arizona for purposes of general jurisdiction. *See Daimler AG v. Bauman*,  
 22 571 U.S. 117, 137 (2014). Nor is there specific jurisdiction because the alleged  
 23 suppression of HEX is not the result of any affirmative act by BCM seeking to engage  
 24 with the forum, and Plaintiff’s alleged injuries do not arise from, or relate to, any alleged  
 25 contacts by BCM with the forum. Indeed, the purported scheme to deflate the value of  
 26 HEX has no connection whatsoever to Arizona other than Plaintiff’s alleged injury  
 27 happened to occur while he was residing there. Plaintiff’s attempt to conflate BCM with  
 28 Binance Holdings Ltd., a foreign cryptocurrency exchange platform, also fails to

1 demonstrate jurisdiction over BCM. Binance Holdings Ltd. is a separate entity and, in  
 2 any event, multiple federal courts have found no personal jurisdiction over Binance  
 3 Holdings Ltd. based on similar allegations to those asserted here. *See Reynolds v.*  
 4 *Binance Holdings Ltd.*, 481 F. Supp. 3d 997 (N.D. Cal. 2020); *Guarini v. Doe*, No. 21-  
 5 cv-81890-DMM (S.D. Fla. Apr. 5, 2022), ECF No. 25.

6 *Second*, the Complaint against BCM should be dismissed for the additional reason  
 7 that Plaintiff fails to state a claim. The claim under the Commodity Exchange Act  
 8 (“CEA”) fails because Plaintiff has not pleaded facts supporting any of the required  
 9 elements—market influence, artificial pricing, causation, intent, or damages. *Respondeat*  
 10 *superior* liability also fails because it is not cognizable under the CEA to hold parent  
 11 companies liable for the acts of their subsidiaries. The claim under the Arizona  
 12 Consumer Fraud Act is a nonstarter because there was no sale or advertisement of  
 13 merchandise and, in any event, Plaintiff fails to allege any fraudulent misrepresentation,  
 14 intent, reliance, or damage as to BCM. Finally, the claims for control person liability and  
 15 antitrust liability are facially deficient and lack any legal basis.

16 *Third*, the claims against the Binance Individual Defendants should be dismissed  
 17 for several independent reasons. As with BCM, there is no personal jurisdiction over the  
 18 Binance Individual Defendants, which Plaintiff himself alleges reside in Taiwan, Malta,  
 19 and outside of Arizona. Compl. ¶¶ 32–34. There are no allegations that any of these  
 20 executives had any contact with Arizona. The fiduciary shield doctrine also prevents the  
 21 assertion of personal jurisdiction over the Binance Individual Defendants based on  
 22 nothing more than an attenuated association with BCM. Alternatively, the claims against  
 23 the Binance Individual Defendants should be dismissed for failure to state a claim  
 24 because they are inadequately pled and lack any legal basis. Finally, although this Court  
 25 permitted alternative service, the Binance Individual Defendants wish to preserve their  
 26 argument that Plaintiff’s attempt to serve them by Twitter alone was insufficient and does  
 27 not comport with constitutional due process.

28

## **BACKGROUND**

BCM is a foreign investment company organized under the laws of the British Virgin Islands.<sup>1</sup> In April 2020, BCM acquired CoinMarketCap, which is incorporated and headquartered in Delaware and operates a website for tracking and ranking various cryptocurrencies and assets. Compl. ¶¶ 13, 14, 16. CoinMarketCap’s mission is to empower “retail users with unbiased, high quality and accurate information for drawing their own informed conclusions.”<sup>2</sup> BCM is the corporate parent of CoinMarketCap, but there are no well-pled factual allegations that BCM controls the day-to-day management or operations of CoinMarketCap.

In this litigation, Plaintiff takes issue with the way in which CoinMarketCap ranks certain cryptocurrencies based on criteria that are publicly disclosed and available to all. Specifically, the Complaint alleges that, as of September 13, 2021, a particular cryptocurrency called HEX should have been ranked sixth near the top of the first page of results based on its market capitalization alone (notwithstanding the numerous other factors CoinMarketCap identifies as relevant to its evaluating rankings). Compl. ¶¶ 82–86. Instead, HEX was ranked 201 on the third page of results. *Id.* ¶ 87. This ranking, according to Plaintiff, artificially suppressed the value of HEX since September 27, 2020, and inflated other, higher-ranked cryptocurrencies. *Id.* ¶¶ 93, 114–18. Plaintiff allegedly acquired an unspecified amount of HEX prior to the alleged suppression period, but then sold an unspecified amount of HEX during the suppression period, all while residing in Arizona. *Id.* ¶¶ 9–12.

The Complaint is brought against CoinMarketCap, its parent company BCM, a separate U.S. entity called BAM Trading Services Inc. (“BAM”), Catherine Coley, the former CEO of BAM, and three individuals affiliated with non-party Binance Holdings

<sup>1</sup> See Binance Capital Management Co., Ltd., OPENLEIs, [http://openleis.com/legal\\_entities/254900ENW84IEWDY1T88/Binance-Capital-Management-Co-Ltd-](http://openleis.com/legal_entities/254900ENW84IEWDY1T88/Binance-Capital-Management-Co-Ltd-) (last updated May 18, 2022).

<sup>2</sup> About CoinMarketCap, COINMARKETCAP, <https://coinmarketcap.com/about/> (last visited Apr. 28, 2022) (cited in Compl. ¶¶ 14 n.2, 76 n.31).

1 Ltd. Those individuals are Binance Holdings Ltd.’s Chief Executive Officer Changpeng  
 2 Zhao, Chief Marketing Officer Yi He, and Chief Growth Officer Ted Lin. The  
 3 Complaint asserts that the Binance Individual Defendants are “control persons of the  
 4 Corporate Defendants,” that they had “significant knowledge” about, and “financial  
 5 interests” in, certain cryptocurrencies. Compl. ¶¶ 50, 51, 104.

6 Plaintiff brings (i) a claim against all Defendants for price manipulation under the  
 7 Commodity Exchange Act (Compl. ¶¶ 157–93); (ii) a claim against BCM for strict  
 8 liability under the Commodity Exchange Act (*id.* ¶¶ 194–216); (iii) a claim against BCM  
 9 under the Arizona Consumer Fraud Act (*id.* ¶¶ 217–35); (iv) a claim against the Binance  
 10 Individual Defendants for control person liability under the Arizona Consumer Fraud Act  
 11 (*id.* ¶¶ 236–56); and (v) a claim against BCM for alleged violations of federal and state  
 12 antitrust laws (*id.* ¶¶ 257–62).

13 **ARGUMENT**

14 **I. THERE IS NO PERSONAL JURISDICTION OVER BCM.**

15 The Complaint should be dismissed with respect to BCM for lack of personal  
 16 jurisdiction. Plaintiff bears the burden of establishing a *prima facie* showing of personal  
 17 jurisdiction. *See Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1141–42 (9th Cir. 2017);  
 18 *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1066 (9th Cir. 2014).<sup>3</sup> Here, the Complaint  
 19 is facially deficient. Plaintiff does not allege facts that come close to establishing that  
 20 BCM is “essentially at home” in Arizona for purposes of general jurisdiction or has  
 21 engaged in the “purposeful direction” or “availment” necessary to support specific  
 22 jurisdiction. And none of the events involving the purported suppression of HEX are  
 23 alleged to have any connection, much less a sufficient one, to Arizona. Because Plaintiff  
 24 has not and cannot allege any basis for personal jurisdiction over BCM in Arizona, the  
 25 Complaint should be dismissed.

26  
 27 <sup>3</sup> “Because Arizona’s long-arm statute extends jurisdiction ‘to the maximum extent  
 28 permitted by the . . . Constitution of the United States,’ the Court’s personal jurisdiction  
 inquiry largely collapses into an analysis of Due Process.” *Patterson v. Home Depot,  
 USA, Inc.*, 684 F. Supp. 2d 1170, 1175 (D. Ariz. 2010) (quoting Ariz. R. Civ. P. 4.2(a)).

1                   **A. The Court Lacks General Jurisdiction Over BCM.**

2                   Plaintiff cannot meet his burden of establishing a *prima facie* case of general  
 3 personal jurisdiction over BCM. A court may assert “general jurisdiction over a foreign  
 4 corporation only if the corporation’s connections to the forum state ‘are so “continuous  
 5 and systematic” as to render it essentially at home in the forum State.’” *Williams v.*  
 6 *Yamaha Motor Co.*, 851 F.3d 1015, 1020 (9th Cir. 2017) (quoting *Goodyear Dunlop*  
 7 *Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). A plaintiff invoking general  
 8 jurisdiction must meet an “exacting standard . . . because a finding of general jurisdiction  
 9 permits a defendant to be haled into court in the forum state to answer for any of its  
 10 activities anywhere in the world.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d  
 11 797, 801 (9th Cir. 2004). The paradigmatic basis for general jurisdiction exists when the  
 12 corporation is incorporated or has its principal place of business in the forum state. *See*  
 13 *Daimler*, 571 U.S. at 137. “Only in an ‘exceptional case’ will general jurisdiction be  
 14 available anywhere else.” *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1069 (9th Cir. 2015)  
 15 (quoting *Martinez*, 764 F.3d at 1070).

16                   Here, Plaintiff does not allege that BCM is incorporated in Arizona, or that it  
 17 maintains its principal place of business in the United States, let alone Arizona. In the  
 18 absence of these paradigmatic bases, general jurisdiction can only be established where  
 19 the company’s contacts with the forum state are “so ‘continuous and systematic’ as to  
 20 render [it] essentially at home in the forum State.” *Daimler*, 571 U.S. at 139.

21                   No such exceptional case exists here.<sup>4</sup> While Plaintiff argues that it is not clear  
 22 where BCM is headquartered, Compl. ¶ 35, BCM’s “lack of any headquarters does not  
 23 make [Arizona] its jurisdictional home.” *Reynolds*, 481 F. Supp. 3d at 1003. And  
 24 Plaintiff has failed “to identify any other facts, alleged or otherwise, that would make this

25                   <sup>4</sup> The only case of which we are aware that has ever been found to satisfy this test is  
 26 *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), as the Supreme Court  
 27 recognized in *Daimler*, 571 U.S. at 130, n.8, 139, n.19. In *Perkins*, a Philippines mining  
 28 company was found to be subject to general jurisdiction in Ohio, despite its lack of  
 incorporation and physical operations there, because wartime exigency had forced  
 management to run the company from Ohio. 342 U.S. at 447–48. The unique  
 circumstances in *Perkins* are far removed from the situation here.

1 case exceptional under *Daimler* and place [BCM] ‘at home’ in [Arizona].” *Id.* Plaintiff  
 2 does not even allege that BCM has any business contacts in the forum, much less so  
 3 many contacts as to render BCM essentially at home in Arizona. *See BNSF Ry. Co. v.*  
 4 *Tyrrell*, 137 S. Ct. 1549, 1559 (2017) (reiterating that “the general jurisdiction inquiry  
 5 does not focus on the magnitude of the defendant’s in-state contacts,” and the mere  
 6 conducting of business “does not suffice to permit the assertion of general jurisdiction  
 7 over claims . . . that are unrelated to any activity occurring in [the forum]” (cleaned up));  
 8 *see also Ranza*, 793 F.3d at 1069 (finding no general jurisdiction where a foreign  
 9 company had dozens of employees working at U.S. affiliate, averaged 47 trips per month  
 10 to U.S. affiliate, and sold products in forum state’s stores); *Handsome Music, LLC v.*  
 11 *Etoro USA LLC*, LACV 20-08059-VAP (JCx), 2020 WL 8455111 at \*5 (C.D. Cal. Dec.  
 12 17, 2020) (finding no general jurisdiction over online trading platform even though it  
 13 maintained a “highly interactive website” and conducted “internet advertising” in the  
 14 forum); *Sutcliffe v. Honeywell Int’l, Inc.*, No. CV-13-01029-PHX-PGR, 2015 WL  
 15 1442773, at \*5 (D. Ariz. Mar. 30, 2015) (finding no general jurisdiction over plane  
 16 manufacturer despite numerous “purchases of aerospace-related products from Arizona  
 17 companies”).

18 Instead, Plaintiff’s jurisdictional allegations reduce to equating BCM, a foreign  
 19 investment company, with Binance Holdings Ltd., a separate company that operates a  
 20 foreign cryptocurrency exchange. Plaintiff then asserts that BCM “has regularly and  
 21 intentionally engaged in numerous online cryptocurrency transactions inside the United  
 22 States” and “has promoted, inside the United States, the sale of digital assets on its  
 23 exchange.” Compl. ¶ 35. As an initial matter, there is no basis to equate BCM with  
 24 Binance Holdings Ltd., simply because they both have “Binance” in their names.  
 25 Moreover, none of the conclusory assertions made about Binance Holdings Ltd.’s  
 26 contacts with the United States are sufficient to give rise to general personal jurisdiction.

27 For example, a federal court declined to find general jurisdiction over Binance  
 28 Holdings Ltd. in California based on the allegation that “the majority of Binance’s

1 customers are in the United States” because, even if it were true, it does not “illustrate  
 2 that Binance has the requisite affiliations with [the forum] to be essentially at home.”  
 3 *Reynolds*, 481 F. Supp. 3d at 1003, 1004. More recently, a second federal court found  
 4 that Binance Holdings Ltd. is not subject to general jurisdiction in Florida based on the  
 5 allegation that Binance “serves customers in the United States . . . through its United  
 6 States-based affiliate Binance.US.” *Guarini*, ECF No. 25, at 5. And a third federal court  
 7 held that Binance Holdings Ltd. need not register as an exchange under the federal  
 8 securities laws because it is not “within or subject to the jurisdiction of the United  
 9 States.” *Lee v. Binance*, No. 20-cv-02803-ALC (S.D.N.Y. Mar. 31, 2022), ECF No. 77,  
 10 at 8. The court rejected allegations about Binance’s U.S. contacts as insufficient to show  
 11 that the company operates as “a domestic exchange.” *Id.* Plaintiff adds nothing to the  
 12 jurisdictional allegations already considered and rejected by these courts.<sup>5</sup>

13 **B. The Court Lacks Specific Jurisdiction Over BCM.**

14 Plaintiff has also failed to meet his burden of establishing specific personal  
 15 jurisdiction over BCM. To adequately plead specific jurisdiction over a foreign  
 16 defendant, a plaintiff must establish: (i) the defendant either purposefully directed its  
 17 activities toward the forum or purposefully availed itself of the benefits afforded by the  
 18 forum; and (ii) the claim arises from, or relates to, the defendant’s forum-related  
 19 activities. *See Williams*, 851 F.3d at 1023. Plaintiff bears the burden of satisfying these  
 20 first two prongs of the analysis. *See Schwarzenegger*, 374 F.3d at 802. Only if the  
 21

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22 <sup>5</sup> In any event, Plaintiff’s assertion that Binance Holdings Ltd. regularly engages in  
 23 transactions with U.S. customers is belied by his very own allegations. As alleged in the  
 24 Complaint, Binance.com has not been available to U.S. users since 2019—well before the  
 25 alleged suppression period began in September 2020. Compl. ¶ 36. During the time  
 26 period relevant to the allegations in the Complaint, Plaintiff alleges that U.S. users have  
 27 bought, sold, and traded cryptocurrencies on the Binance.US platform, which is owned  
 28 and operated by Defendant BAM Trading Services Inc. *Id.* ¶ 41. Plaintiff then questions  
 “whether there is any meaningful distinction” between Binance Holdings Ltd. and BAM  
 Trading Services. *Id.* ¶ 67. There is no basis to equate BAM with Binance Holdings  
 Ltd., and then to equate Binance Holdings Ltd. with BCM. Allegations must be  
 supported by facts, not innuendo. *See Barba v. Seung Heun Lee*, No. CV 09-1115-  
 PHX-SRB, 2009 WL 8747368, at \*4 (D. Ariz. Nov. 4, 2009).

1 plaintiff satisfies those prongs, does the burden shift to the defendant to show that the  
 2 exercise of jurisdiction would not be reasonable. *See Picot v. Weston*, 780 F.3d 1206,  
 3 1212 (9th Cir. 2015).

4 *First*, “purposeful direction” requires that the defendant have committed an  
 5 intentional act “expressly aimed” at the forum state, causing harm that the defendant  
 6 knows is likely to be suffered in the forum state. *Morrill*, 873 F.3d at 1142. By contrast,  
 7 “purposeful availment” is typically an action by the defendant that invokes the benefits  
 8 and protections of the laws in the forum state. *See Pebble Beach Co. v. Caddy*, 453 F.3d  
 9 1151, 1155 (9th Cir. 2006). Neither purposeful direction nor purposeful availment is  
 10 present here. Plaintiff does not allege any conduct on the part of BCM, let alone that any  
 11 of BCM’s conduct was specifically directed at Arizona. There are no allegations that  
 12 BCM directed any conduct at Arizona with respect to the alleged suppression of HEX or  
 13 the administration of CoinMarketCap’s rankings system. And there are no allegations  
 14 that BCM’s actions evinced “some type of affirmative conduct which allows or promotes  
 15 the transaction of business within the forum state.” *Picot*, 780 F.3d at 1212 (quoting *Sher*  
 16 *v. Johnson*, 911 F.2d 1357, 1362 (9th Cir. 1990)).

17 As discussed above, Plaintiff improperly conflates BCM with Binance Holdings  
 18 Ltd. to argue that BCM “has regularly and intentionally engaged in numerous online  
 19 cryptocurrency transactions inside the United States” and “has promoted, inside the  
 20 United States, the sale of digital assets on its exchange.” Compl. ¶ 35. There is no  
 21 factual or legal basis to merge these two separate entities. Moreover, mere accessibility  
 22 of an interactive website or advertisement in the United States would not give rise to  
 23 specific jurisdiction over a foreign corporation. *See Cybersell, Inc. v. Cybersell, Inc.*, 130  
 24 F.3d 414, 415 (9th Cir. 1997) (holding that “it would not comport with traditional notions  
 25 of fair play and substantial justice . . . for Arizona to exercise personal jurisdiction over  
 26 an allegedly infringing Florida web site advertiser who has no contacts with Arizona  
 27 other than maintaining a home page that is accessible to Arizonans, and everyone else,  
 28 over the Internet” (citations and internal quotation marks omitted)); *Handsome Music*,

1 2020 WL 8455111 at \*7–11 (holding that defendant’s “online trading platform” that  
 2 included cryptocurrency, was not “directed at” forum state because plaintiffs failed to  
 3 demonstrate the necessary “something more” than operating a website); *Matus v.*  
 4 *Premium Nutraceuticals, LLC*, No. EDCV 15-01851 DDP (DTBx), 2016 WL 3078745,  
 5 \*3 (C.D. Cal. May 31, 2016) (“Absent ‘something more’ than the maintenance of a  
 6 minimally interactive website, Plaintiff has not met its burden to satisfy even the  
 7 purposeful availment prong of the specific jurisdiction test.”). Here, there is no allegation  
 8 that BCM (or Binance Holdings Ltd. for that matter) purposefully directed any specific  
 9 advertisement or part of any website at Arizona. Because Plaintiff has demonstrated  
 10 neither purposeful direction nor purposeful availment by BCM, he cannot satisfy the first  
 11 requirement for establishing specific jurisdiction in Arizona.

12 *Second*, even if access to a website could constitute purposeful direction (which it  
 13 does not), none of Plaintiff’s claims arise out of, or relate to, that website activity. *See*  
 14 *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1025 (2021). Specific  
 15 jurisdiction requires “a connection between the forum and the specific claims at issue.”  
 16 *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S. Ct.  
 17 1773, 1781 (2017).

18 No such connection exists here. Plaintiff has not even attempted to allege that his  
 19 claims arise out of, or relate to, any specific conduct BCM directed at Arizona. There are  
 20 no allegations that BCM directed any action at Arizona with respect to the purported  
 21 suppression of HEX or the administration of CoinMarketCap’s rankings system. Indeed,  
 22 the value of HEX was not allegedly suppressed because of anything that “independently  
 23 occurred” in Arizona. *Walden v. Fiore*, 571 U.S. 277, 290 (2014). The only alleged  
 24 connection to Arizona is that Plaintiff happened to be residing there at the time of the  
 25 alleged injury. Compl. ¶¶ 9–12. But “mere injury to a forum resident is not a sufficient  
 26 connection to the forum.” *Walden*, 571 U.S. at 290. Plaintiff “cannot be the only link  
 27 between the defendant and the forum. Rather, it is the defendant’s conduct that must form  
 28 the necessary connection with the forum State that is the basis for its jurisdiction over

1 him.” *Id.* at 285; *see also Shaw v. Vircurex*, No. 18-cv-00067-PAB-SKC, 2019 WL  
 2 2636271, at \*4 (D. Colo. Feb. 21, 2019) (finding lack of specific jurisdiction in  
 3 cryptocurrency case where “the only alleged connection between defendants and  
 4 Colorado “is harm suffered by a Colorado resident”). Plaintiff has thus failed to allege  
 5 any connection, much less a sufficient one, between the suppression of HEX’s value and  
 6 Arizona.

7       Indeed, under Plaintiff’s theory, BCM would be subject to specific jurisdiction in  
 8 any state where a user of CoinMarketCap is purportedly harmed by out-of-state  
 9 conduct—even though the claims lack any substantial connection to the forum and to  
 10 BCM itself. Such an expansive view of jurisdiction is patently unreasonable and violates  
 11 the “traditional notions of fair play and substantial justice” required by due process. *Int’l*  
 12 *Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310,  
 13 316 (1945) (citing *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

14 **II. ALTERNATIVELY, THE CLAIMS AGAINST BCM SHOULD BE  
 15 DISMISSED FOR FAILURE TO STATE A CLAIM.**

16       Even if personal jurisdiction were to exist over BCM—which it does not—the  
 17 Complaint should be dismissed because Plaintiff fails to state a claim to relief that is  
 18 plausible on its face. *See Weston Fam. P’ship LLLP v. Twitter, Inc.*, 29 F.4th 611, 617  
 19 (9th Cir. 2022) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). BCM  
 20 submits that Counts I, III, and V should be dismissed for the reasons stated in  
 21 CoinMarketCap’s motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6).<sup>6</sup> It writes  
 22 separately to address the pleading deficiencies in the remaining Counts.

23       In Count II, Plaintiff alleges that “Binance and Binance.US are jointly and  
 24 severally liable for the torts of CoinMarketCap.com under the common law and statutory  
 25 version of *respondeat superior* applicable to commodities” or alternatively “the corporate  
 26 veil should be pierced between Binance, Binance.US, and CoinMarketCap.com.” Compl.  
 27 ¶¶ 215–16. Count II should be dismissed for two reasons. First, for the reasons stated in  
 28

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<sup>6</sup> *See* Def. CoinMarketCap OpCo, LLC’s Mem. of P&A ISO Mot. to Dismiss, at 8–16.

1 CoinMarketCap's motion, there is no actionable claim against any Defendant for a  
 2 violation of the CEA. Thus, there can be no *respondeat superior* liability. Second, even  
 3 if there was an actionable claim under the CEA, BCM cannot be held liable for  
 4 CoinMarketCap's alleged violation because 7 U.S.C. § 2(a)(1)(B) is not a mechanism  
 5 through which parent companies can be held liable for the actions of their subsidiaries.  
 6 See *In re Nat. Gas Commodity Litig.*, 337 F. Supp. 2d 498, 515 (S.D.N.Y. 2004)  
 7 ("Plaintiffs have not identified, nor has the Court located, any case in which corporate  
 8 parents were held liable for the actions of their corporate subsidiaries under §  
 9 2(a)(1)(B)."). And Plaintiff has provided no factual basis to pierce the corporate veil  
 10 other than BCM's "mere ownership" of CoinMarketCap, which is insufficient as a matter  
 11 of law. See *id.*

12 In Count IV, Plaintiff alleges that "federal and Arizona securities laws" make all  
 13 Defendants other than CoinMarketCap "controlling persons jointly and severally liable"  
 14 for CoinMarketCap's alleged violation of the Arizona Consumer Fraud Act. Compl. ¶  
 15 237. Plaintiff, however, fails to cite any authority extending the concept of control  
 16 person liability under the securities laws to the Arizona Consumer Fraud Act, or even  
 17 allege that any Defendant actually had the power to control the activities of  
 18 CoinMarketCap. See *Eastern Vanguard Forex, Ltd. v. Ariz. Corp. Comm'n*, 79 P.3d 86,  
 19 99 (Ariz. Ct. App. 2003) (holding that control persons must have "the power to directly  
 20 or indirectly control the activities of those persons or entities liable as primary  
 21 violators"). Accordingly, Count IV, which has no legal or factual basis, should be  
 22 dismissed.

23 **III. THE CLAIMS AGAINST THE BINANCE INDIVIDUAL DEFENDANTS  
 SHOULD BE DISMISSED.**

24 The claims against the Binance Individual Defendants should also be dismissed  
 25 for lack of personal jurisdiction, failure to state a claim, and insufficient service. Each of  
 26 these individuals resides in a foreign country and the allegations against them amount to  
 27 nothing more than vague descriptions of their alleged positions at Binance Holdings Ltd.  
 28 (a separate entity that is not a defendant in this action), and the conclusory assertion that

1 they are “control persons of the Corporate Defendants,” with “significant knowledge”  
 2 and “financial interests” in certain cryptocurrencies. Compl. ¶¶ 50, 51, 104. The  
 3 Complaint does not identify any affirmative conduct by these individuals, much less  
 4 conduct in connection with the alleged suppression of HEX. Finally, Plaintiff’s attempt  
 5 to serve the Binance Individual Defendants by Twitter alone fails to comport with due  
 6 process.

7 **A. There is No Personal Jurisdiction Over the Binance Individual Defendants.**

8 Plaintiff has failed to establish a *prima facie* case of personal jurisdiction over the  
 9 Binance Individual Defendants. None of the individuals reside in Arizona for purposes  
 10 of general jurisdiction. According to the Complaint, Changpeng Zhao is the founder and  
 11 Chief Executive Officer of Binance and resides in Taiwan. Compl. ¶¶ 27, 32, 198. The  
 12 Complaint alleges that Yi He, the Chief Marketing Officer, resides in Malta. *Id.* ¶¶ 33,  
 13 187. While the Complaint does not allege where Ted Lin, the Chief Growth Officer,  
 14 resides, it acknowledges that he is not a resident of Arizona. *Id.* ¶¶ 34, 186. Moreover,  
 15 Plaintiff does not allege any affirmative conduct by any of the Binance Individual  
 16 Defendants in Arizona. Accordingly, there is neither general nor specific jurisdiction  
 17 over the Binance Individual Defendants.

18 To the extent that Plaintiff attempts to assert personal jurisdiction over the Binance  
 19 Individual Defendants based on an attenuated association with BCM, this attempt is  
 20 defeated by the fiduciary shield doctrine, which provides that a state cannot exercise  
 21 personal jurisdiction over nonresident corporate directors and officers based on the  
 22 contacts of their employer. *See M2 Software Inc. v. M2 Comms., L.L.C.*, 149 F. App’x  
 23 612, 615 (9th Cir. 2005); *Davis v. Metro Prods., Inc.*, 885 F.2d 515, 520 (9th Cir. 1989).  
 24 To overcome the fiduciary shield doctrine, Plaintiffs must establish that (i)  
 25 CoinMarketCap or BCM are alter egos of the Binance Individual Defendants, or (ii) the  
 26 Binance Individuals Defendants were the “guiding spirit” behind the wrongful conduct,  
 27 *Davis*, 885 F.2d at 521, 523 n.10, in that they “personally directed the activities toward  
 28 the forum state giving rise to the complaint.” *Ind. Plumbing Supply, Inc. v. Standard of*

1 *Lynn, Inc.*, 880 F. Supp. 743, 750 (C.D. Cal. 1995). The corporate officer must be the  
 2 “primary participant in the alleged wrongdoing” or at least “had control of, and direct  
 3 participation in the alleged activities.” *AMA Multimedia LLC v. Sagan Limited*, No. CV  
 4 16-01269-PHX-DGC, 2020 WL 5988224, at \*2 (D. Ariz. Oct. 9, 2020) (citation omitted).

5 No such allegations have been made here. First, Plaintiff does not assert that  
 6 BCM, CoinMarketCap, or even Binance Holdings Ltd. are alter egos of the Binance  
 7 Individual Defendants. *See Success Is Yours, Inc. v. LifeSuccess Pub., LLC*, No. CV10–  
 8 0758-PHX DGC, 2010 WL 4225880, at \*3 (D. Ariz. Oct. 21, 2010) (conclusory  
 9 allegations about defendants being “the guiding spirit and driving force behind” the  
 10 alleged wrongdoing are “not sufficient”). Second, Plaintiff fails to allege that any of the  
 11 Binance Individual Defendants personally directed the alleged suppression of the value of  
 12 HEX. At most, the Complaint alleges that the Binance Individual Defendants were  
 13 “aware at the time Binance purchased CoinMarketCap.com that there were issues with its  
 14 rankings” and that, “[u]pon information and belief,” the Binance Individual Defendants  
 15 have “large holdings” in certain cryptocurrencies that compete with HEX. Compl. ¶¶ 50,  
 16 130. Mere awareness or an incentive to suppress the value of HEX is far removed from  
 17 any suggestion that the Binance Individual Defendants actively and personally directed,  
 18 ratified, or even participated in the alleged wrongdoing. *See Tangiers Investors, L.P. v.*  
 19 *Americhip Int'l, Inc.*, No. 11CV339 JLS BGS, 2011 WL 3299099, at \*2 (S.D. Cal. Aug.  
 20 1, 2011) (conclusory allegation that fraud occurred with CEO’s “knowledge and support”  
 21 was not sufficient to conclude that he “was the driving force or primary participant in the  
 22 alleged wrongdoing”).

23 **B. Plaintiff Fails to State a Claim Against the Binance Individuals.**

24 The claims against the Binance Individual Defendants should also be dismissed  
 25 because Plaintiff fails to state a claim to relief. The only causes of action against the  
 26 Binance Individual Defendants are Counts I and IV. Count I should be dismissed for the  
 27 reasons stated in CoinMarketCap’s motion to dismiss pursuant to Fed. R. Civ. P.  
 28

1 12(b)(6).<sup>7</sup> Because Plaintiff does not allege any specific conduct on the part of the  
 2 Binance Individual Defendants, the Complaint fails both the notice pleading standard and  
 3 the heightened pleading standard applicable to claims of market manipulation and fraud.  
 4 *See In re Tether & Bitfinex Crypto Asset Litig.*, No. 19 CIV. 9236 (KPF), 2021 WL  
 5 4452181, at \*33 (S.D.N.Y. Sept. 28, 2021) (holding that manipulation claims under the  
 6 CEA sound in fraud and therefore the more stringent pleading requirements of Fed. R.  
 7 Civ. P. 9(b) apply). Count IV should be dismissed for the reasons stated above. Plaintiff  
 8 fails to cite any authority suggesting that control person liability under the securities laws  
 9 is cognizable under the Arizona Consumer Fraud Act, or even allege that any of the  
 10 Binance Individual Defendants actually had the power to control the activities of  
 11 CoinMarketCap. *See Cornelis v. B&J Smith Associates LLC*, No. CV-13-00645-PHX-  
 12 BSB, 2013 WL 6795969, at \*4 (D. Ariz. Dec. 20, 2013) (conclusory assertions about  
 13 corporate control are insufficient to disregard the corporate form).

14 **C. Service on the Binance Individual Defendants Was Insufficient.**

15 Although this Court permitted alternative service (*see* ECF No. 54), the Binance  
 16 Individual Defendants respectfully preserve their opposition to service through Twitter  
 17 *alone* as unprecedented, unfair, and at odds with due process.

18 Where the location of a foreign defendant is unknown, Fed. R. Civ. P. 4(f)(3)  
 19 permits service “by other means not prohibited by international agreement, as the court  
 20 orders.” Under Rule 4(f)(3), courts can order service through a variety of methods,  
 21 “including publication, ordinary mail, mail to the defendant’s last known address,  
 22 delivery to the defendant’s attorney, telex, and most recently, email,” provided that there  
 23 is no international agreement directly to the contrary. *Rio Props., Inc. v. Rio Intern.*  
 24 *Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002). Although courts have permitted service  
 25 by social media when paired with a second, well-established method of service such as  
 26 mail or email, *see, e.g.*, *Nowak v. XAPO, Inc.*, No. 20-cv-3643-BLF, 2020 WL 5877576,  
 27 at \*4 (N.D. Cal. Oct. 2, 2020), several courts have rejected requests to serve defendants

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28 <sup>7</sup> *See* Def. CoinMarketCap OpCo, LLC’s Mem. of P&A ISO Mot. to Dismiss, at 9–13.

1 by social media alone, *see, e.g.*, *iHealth Labs, Inc. v. Fingix, i-Enterprise*, No. 20-cv-  
 2 05699-VKD, 2020 WL 7260600, at \*3 (N.D. Cal. Dec. 10, 2020); *Doe v. Hyassat*, 337  
 3 F.R.D. 12, 15 (S.D.N.Y. 2020); *Entrepreneur Media, Inc. v. Doe*, No. 8:19-cv-01706-  
 4 JLS-JDE, 2019 WL 8638802, at \*2 (C.D. Cal. Dec. 5, 2019).

5 The cases cited by this Court in its Order (ECF No. 54) authorizing alternative  
 6 service involved at least two methods of service. *See WhosHere, Inc. v. Orun*, No. 1:13-  
 7 cv-00526-AJT-TRJ, 2014 WL 670817, at \*1 (E.D. Va. Feb. 20, 2014) (authorizing  
 8 service by email and through Facebook and LinkedIn); *FTC v. PCCare247 Inc.*, No. 12  
 9 Civ. 7189(PAE), 2013 WL 841037, at \*5 (S.D.N.Y. Mar. 7, 2013) (authorizing service  
 10 on individuals by email and through Facebook, but noting that, “if the FTC were  
 11 proposing to serve defendants *only* by means of Facebook, as opposed to using Facebook  
 12 as a supplemental means of service, a substantial question would arise whether that  
 13 service comports with due process”). The only case authorizing service by social media  
 14 alone is inapposite. *See St. Francis Assisi v. Kuwait Finance HouseEyeglasses*, No. 3:16-  
 15 CV-3240-LB, 2016 WL 5725002 (N.D. Cal. Sept. 30, 2016). In that case, the plaintiff  
 16 was suing a foreign national for damages arising from the financing of terrorist  
 17 organizations, and the defendant had used Twitter “to fundraise large sums of money for  
 18 terrorist organizations by providing bank-account numbers to make donations.” *Id.* at \*1.  
 19 Because the defendant had used Twitter to further the alleged crime, which was the  
 20 subject of the lawsuit, the court could be reasonably certain that Twitter would apprise  
 21 the defendant of the pending suit. *See id.* at \*2. There is no suggestion here that Twitter  
 22 played any role in the alleged suppression scheme.

23 Plaintiff attempted no other method of service other than Twitter. While  
 24 Plaintiff’s private investigator could not identify the current residences of the Binance  
 25 Individual Defendants, he did identify possible mailing addresses, email addresses, and  
 26 other social media accounts. *See* ECF No. 24-1. Conspicuously absent from Plaintiff’s  
 27 motion for alternative service is any attempt to serve through these other addresses.  
 28 Instead, Plaintiff merely tweeted a copy of the summons and a link to the Complaint to

1 the alleged Twitter accounts of the Binance Individual Defendants. *See* ECF No. 62-1, at  
 2 2-3. And contrary to Plaintiff's representations to this Court, *only* the account of  
 3 Changpeng Zhao is "verified" as indicated by the blue check mark next to his Twitter  
 4 handle (*see* ECF No. 24-2, at 4), signifying that "an account of public interest is  
 5 authentic."<sup>8</sup> By contrast, the accounts for Yi He and Ted Lin are not accompanied by the  
 6 blue check mark (*see* ECF No. 24-2, at 5, 6), meaning that the individuals running those  
 7 accounts have not verified their identity. *Cf. Fortunato v. Chase Bank USA, N.A.*, No. 11  
 8 Civ. 6608(JFK), 2012 WL 2086950, at \*2 (S.D.N.Y. June 7, 2012) (noting that "anyone  
 9 can make a Facebook profile using real, fake, or incomplete information, and thus, there  
 10 is no way for the Court to confirm" whether a profile belongs to the defendant to be  
 11 served).

12 Plaintiff's attempt to serve two unverified accounts is why service by social media  
 13 alone violates due process. *See Solis v. Arizona Movers & Storage Inc.*, No. CV-18-  
 14 02353-PHX-JAT, 2018 WL 5255185, at \*3 (D. Ariz. Oct. 22, 2018) (holding that  
 15 plaintiff failed to show that alternative service by social media "comports with due  
 16 process"); *Osio v. Maduro Moros*, No. 1:21-cv-20706, 2021 WL 1564359, at \*4 (S.D.  
 17 Fla. Apr. 21, 2021) ("Plaintiffs seek to serve three of the Individual Defendants *only*  
 18 through social media, whether Facebook or Twitter, which raises due process concerns"  
 19 (emphasis in original)). But even the attempt to serve only the verified Twitter account  
 20 of Changpeng Zhao is problematic. Zhao has 3.9 million followers on Twitter (*see* ECF  
 21 No. 24-2 at 4), receives a "vast number of tweets" each day, and he "may well have been  
 22 reluctant to click on a link sent to him by a stranger" due to cybersecurity concerns.  
 23 *Strange v. Islamic Republic of Iran*, No. 14-cv-00435-CKK (D.D.C. June 4, 2019), ECF  
 24 No. 122, at 3, 4 (rejecting alternative service by Twitter on Hamid Karzai, the former  
 25 President of Afghanistan). Given these concerns about the reliability of service on social  
 26 media, and the case law holding that social media cannot be the sole method of service,

27  
 28 <sup>8</sup> *See* Twitter, About Verified Accounts, <https://help.twitter.com/en/managing-your-account/about-twitter-verified-accounts> (last visited May 12, 2022).

1 Plaintiff's novel attempt to serve the Binance Individual Defendants by Twitter alone was  
2 legally insufficient.

3 **CONCLUSION**

4 For these reasons, BCM and the Binance Individual Defendants respectfully  
5 request that the Court dismiss Plaintiff's Complaint in its entirety with prejudice for lack  
6 of personal jurisdiction or, in the alternative, for failure to state a claim. The claims  
7 against the Binance Individual Defendants should also be dismissed for insufficient  
8 service.

9  
10 DATED: May 23, 2022

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26  
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## **CERTIFICATE OF SERVICE**

I certify that on the 23rd day of May 2022, I electronically transmitted the foregoing document to the Office of the Clerk of the Court, using the CM/EFC System, for filing and for transmittal of a Notice of Electronic Filing to the CM/EFC registrants on record.

/s/ Sarah Flaaen  
*Employee of KW Law, LLP*